

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:10 mj 63**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
LEONARDO BALDARES,)	
)	
Defendant.)	
)	

THIS MATTER coming on to be heard before the undersigned, pursuant to a motion filed by defendant's counsel entitled "Motion for Reconsideration" (#8). In that motion, defendant's counsel contends that the undersigned did not apply the appropriate standard in ordering the temporary detention of defendant until the issue of detention of defendant could be heard again in the Eastern District of Virginia where the charges against defendant are pending. In the Order entered by the undersigned, the undersigned determined by a preponderance of the evidence that the release of defendant would create a risk of flight on his part. Defendant contends that the appropriate standard is by clear and convincing evidence. In US vs. Xulam, 84 F.3d 441 (C.A.D.C., 1996), the United States Court of Appeals for the District of Columbia stated: "When the government seeks pretrial detention of an individual on the ground that he poses a risk of flight, the standard it must satisfy is a 'preponderance of the evidence'." United States vs. Simpkins, 826 F.2d 94, 96

(D.C.Cir. 1987). The undersigned finds that the appropriate standard was applied.

In regard to defendant's motion, the undersigned has consulted with the United States Marshals and has discovered that defendant is now located in the Eastern District of Virginia and thus all proceedings concerning defendant shall henceforth be held in that district. The Order the undersigned entered detaining defendant was entered without prejudice to further hearings as requested by defendant before the Eastern District of Virginia and defendant may now be heard in that district as to the issue of detention should he so desire.

ORDER

IT IS, THEREFORE, ORDERED that the motion filed by counsel for defendant entitled "Motion for Reconsideration" (#8) is hereby **DENIED**.

Signed: November 16, 2010

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

